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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/954,690	09/12/2001	Marinus A. Doomernik	AVERP3204US	8567

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EXAMINER	
YUAN, DAH WEI D	

ART UNIT	PAPER NUMBER
1745	

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/954,690	DOOMERNIK, MARINUS A.	
	Examiner	Art Unit	
	Dah-Wei D. Yuan	1745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *31 December 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-22 and 24-28* is/are pending in the application.

4a) Of the above claim(s) *1-16 and 24-28* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *17-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *12 September 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

BATTERY TESTER LABEL

Examiner: Yuan S.N. 09/954,690 Art Unit: 1745 May 10, 2004

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 31, 2004 has been entered. Claim 17 was amended.

2. The text of those sections of Title 35, U.S.C. code not included in this action can be found in the prior Office Action issued on September 2, 2004.

Claim Rejections - 35 USC § 102

3. Claims 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Bailey (US 5,760,588).

With respect to claim 17, Bailey teaches a thermochromic battery tester label for a dry-cell battery as shown in Figure 1. The battery tester label (15) generally comprises a laminate or layered assembly having a clear (transparent) film (54), a layer of thermochromic material (24), one or more graphic layers and indicia layer (22,23), a substrate layer (20), an elongated electrically conductive circuit (layer) (18), a pressure sensitive adhesive (16) and a base laminate (30), wherein the thermochromic material and the electrically conductive layer constitute a

battery power indicator. See Figure 2. The clear film (54), the base laminate (30) and the base layer substrate (34) are considered as the base film. The clear film is made of either polyvinyl chloride or polyester. Bailey teaches the base layer substrate (34) can be made of any desired dielectric polymer material. Generally, polyvinyl resins, polyolefin resins, polyester resins and the like would be suitable. Specific examples include polyvinyl chloride, polyethylene and polypropylene. It is preferable to use a dielectric polymer material that will shrink when assembled on a battery. As shown in Figure 7, the length of the base film is longer than the circumference of the battery when the battery label is wrapped around the battery. The battery power indicator is situated between two portions in the laminated film, i.e., between the film (54) and the base laminate (30) in the battery tester label (15). The battery tester label (15) further comprises apertures (openings) 46a and 46b in the base laminate. See Figure 8. They enable contact between conductive circuit (18) and either a battery terminal or can (2) on the other side of the base laminate (30). See Column 3, Line 66 to Column 4, Line 20; Column 7, Lines 60-66; Column 8, Lines 25-58.

With respect to claims 18 and 20, the clear film 54 is selected from the materials, such as polyvinyl chloride or polyester. See Column 8, Lines 38-40.

With respect to claims 18 and 19, the substrate layer (20) can be made of any desired dielectric polymer materials, such as polyvinyl chloride, polyethylene and polypropylene. See Column 8, Lines 54-61.

Claim Rejections - 35 USC § 103

4. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey (US 5,760,588) as applied to claims 17-20 above, and further in view of Gray (US 3,658,611).

Bailey teaches a battery tester label as described above in Paragraph 5. Moreover, Bailey teaches the graphic layer contains decorative ink. See Column 4, Lines 14-15. However, Bailey does not specifically disclose the nature of the decorative ink. Gray teaches the use of a decorative ink or coating as decorative decal. Different decorative inks, including colored, colorless, inorganic pigment and organic pigment, are employed. The inorganic pigments include alumina hydrate, barium sulfate, calcium carbonate, and various metal oxides, i.e., they are all non-metallic compounds. See Column 1, Lines 5-10; Column 4, Lines 47-54. Therefore, it would have been obvious to one of ordinary skill in the art to use a non-metallic pigment on the graphic layer of Bailey, because Gray teaches the non-metallic pigment can be used as a decorative ink to produce markings and design on a substrate.

5. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey (US 5,760,588) as applied to claims 17-20,23 above, and further in view of Rackovan et al. (US 6,436,496 B1).

Bailey et al. disclose a battery tester label as described above in Paragraph 5. However, Bailey et al. do not disclose the addition of an outer film bonded to the outer surface of the base film opposite the indicia layer. Rackovan et al. teach multi-layered heat shrink film for a battery comprising (a) a core layer (base film) (12) comprising a copolymer of ethylene or propylene

with an alpha olefin , (b) a skin layer (11) on the upper surface of the core layer, wherein the skin layer comprises a polyolefin or polyolefin blend, and (c) a printable layer (indicia) (13). See Figure 1. The use of two shrinkable layers and labels on the battery enables good heat stability, e.g., they don't shrink prematurely, even at temperature approaching 170°F. See Column 3, Lines 31-46. Therefore, it would have been obvious to one of ordinary skill in the art to add an outer film to the thermochromic battery tester label of Bailey, because Rackovan et al. teach the heat stability of the battery label can be improved with the additional layer of film.

Response to Arguments

6. Applicant's arguments filed on December 30, 2003 have been fully considered but they are not persuasive.

Applicant's principle arguments are

Amended claim 17 includes a base film that is an insulator for the battery power indicator label. Bailey, in contrast, requires an additional material other than its base film for use as its insulator.

In response to Applicant's arguments, please consider the following comments.

Bailey et al. teach the base layer substrate (34) (part of the base film as defined above in Paragraph 3) can be made of any desired dielectric polymer material. Specific examples include polyvinyl chloride, polyethylene and polypropylene, which are all electrical insulators.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dah-Wei D. Yuan whose telephone number is (571) 272-1295. The examiner can normally be reached on Monday-Friday (8:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan, can be reached on (571) 272-1292. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Dah-Wei D. Yuan
May 10, 2004